# UNITED STATES PATENT AND TRADEMARK OFFICE

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/623,898 | 07/21/2003 | Douglas B. Alston | 030225 | 7643 |

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| EXAMINER |
|---|
| ADDY, ANTHONY S |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2681 | |

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on <u>30 July 2005</u>.

2a)☐ This action is **FINAL**.  2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) <u>1-20</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-20</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>19 November 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All  b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

## DETAILED ACTION

1.      This action is in response to applicant's amendment filed on July 30, 2005.

**Claims** 1-20 are pending in the present application.


### *Response to Arguments*

2.      Applicant's arguments with respect to claims 1-20 have been considered but are

moot in view of the new ground(s) of rejection.


### *Claim Rejections - 35 USC § 102*

3.      The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

4.      Claims 1-4, 9, 11-15 and 18-20 are rejected under 35 U.S.C. 102(e) as being

anticipated by **Hou et al., U.S. Patent Number 6,901,051 (hereinafter Hou)**.

Regarding claim 1, Hou discloses a system, comprising: a service measurement

database having stored therein network service measurement data relating to a network

(see col. 4, lines 4-23, col. 7, lines 59-67 and Fig. 1; where metric generators 15A-15C

reads on a service measurement database, since Hou discloses the metric generators

are able to generate and store network performance metrics); and a server in

communication with the service measurement database (see col. 4, lines 4-48, col. 7,

line 59 through col. 8, line 3 and Fig. 1; shows metric servers 17B-17C in

communication with metric generators 15A-15C) , wherein the server estimates a data

throughput for a device that is in communication with the network based on the network

service measurement data and a parameter received from the device that is in communication with the network (see col. 4, lines 4-55, col. 4, line 65 through col. 5, line 3, col. 9, lines 8-16, col. 11, line 47 through col. 12, line 3 and Fig. 1 [i.e. the limitation "the server estimates a data throughput for a device that is in communication with the network based on the network service measurement data and a parameter received from the device that is in communication with the network" is met by the teaching of Hou that the performance measurements and generation are performed on the server side using network performance metrics stored in the metric generators and the data packets transferred between a source [i.e. a client system] and a computing device [i.e. the metric servers] which constitutes a connection and which meets *a parameter received from the device in communication with the network*).

Regarding claim 2, Hou teaches all the limitations of claim 1. In addition, Hou teaches a system, wherein the server includes an application server (see col. 3, lines 65-67).

Regarding claim 3, Hou teaches all the limitations of claim 1. In addition, Hou teaches a system, wherein the network is one of a wireless network, a wireline network, the Internet, an intranet (see col. 3, lines 16-31).

Regarding claim 4, Hou teaches all the limitations of claim 1. In addition, Hou teaches a system, wherein the device includes one of a personal computer and a handheld computing device (see col. 3, lines 42-64 and Fig. 1).

Regarding claim 9, Hou teaches all the limitations of claim 1. In addition, Hou

teaches a system, wherein the server is in communication with a service center (see

col. 5, lines 38-47).

Regarding claims 11 and 20, Hou discloses an apparatus and a method of

communicating a network relative network throughput to a user device (see col. 5, lines

38-43, col. 4, lines 48-55 and Fig. 1; shows client systems in communication with metric

servers 17B-17C [i.e. reads on a communication device that is in communication with a

computing device] and including metric generators 15A-15C [i.e. reads on a service

measurement database, since Hou discloses the metric generators are able to generate

and store network performance metrics]), comprising: receiving a first parameter from a

communication device that is in communication with a computing device (see col. 8,

lines 43-52, col.. 7, lines 50-52 and col. 4, lines 24-29); receiving a second parameter

from a service measurement database (see col. 4, lines 4-48, col. 7, line 59 through col.

8, line 3); calculating the relative network throughput based on the first and second

parameters (see col. 4, lines 4-55, col. 4, line 65 through col. 5, line 3, col. 9, lines 8-16,

col. 11, line 47 through col. 12, line 3 and Fig. 1 [i.e. the limitation "calculating the

relative network throughput based on the first and second parameters" is met by the

teaching of Hou that the performance measurements and generation are performed on

the server side using network performance metrics stored in the metric generators [i.e.

reads on a second parameter from a service measurement database] and the data

packets transferred between a source [i.e. a client system] and a computing device [i.e.

the metric servers] which constitutes a connection and which meets *a first parameter*

*from a communication device that is in communication with a computing device)*;

and communicating the relative network throughput to the communications device (see

col. 5, lines 38-43).

Regarding claim 12, Hou teaches all the limitations of claim 11. In addition, Hou

teaches a method, wherein receiving the first parameter includes receiving the first

parameter via a network (see col. 3, lines 16-31, col. 4, lines 24-35 and col. 8, lines 43-

52).

Regarding claim 13, Hou teaches all the limitations of claim 11. In addition, Hou

teaches a method, wherein receiving the first parameter via a network includes

receiving the first parameter via the Internet (see col. 3, lines 16-31, col. 4, lines 24-35

and col. 8, lines 43-52).

Regarding claim 14, Hou teaches all the limitations of claim 11. In addition, Hou

teaches a method, wherein receiving a first parameter includes receiving on of a

received signal strength (RSS), a signal-to-interference ratio (SIR), a primary serving

site, a sector and a carrier (see col. 8, lines 43-52).

Regarding claim 15, Hou teaches all the limitations of claim 11. In addition, Hou

teaches a method, wherein receiving a second parameter includes receiving one of an

indication of total voice traffic/sector/carrier, an indication of total data

traffic/sector/carrier, and indication of origination failures, and an indication of dropped

calls (see col. 4, lines 1-47).

Regarding claim 18, Hou teaches all the limitations of claim 11. In addition, Hou teaches a method, wherein calculating the network throughput includes calculating a forward link relative throughput (see col. 4, line 49 through col. 5, line 18).

Regarding claim 19, Hou teaches all the limitations of claim 11. In addition, Hou teaches a method, wherein calculating the network throughput includes calculating the network throughput as one of a numerical value and a range of numerical values (see col. 4, line 49 through col. 5, line 18).

*Claim Rejections - 35 USC § 103*

5.     The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6.     Claims 5-8, 10, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hou et al., U.S. Patent Number 6,901,051 (hereinafter Hou)** as applied to claims 1, 11 and 20 above.

Regarding claims 5-8, 10, 16 and 17, Hou discloses all the limitations of claims 1, 11 and 20. Hou fails to explicitly teach a system and method, wherein the server communicates the throughput of the network to a modem and wherein the modem includes a display area that is configured to display an indication of the throughput of the network. However, the examiner takes Official Notice that it is well known in the art to use a modem to connect a client device to communicate with a network and for a modem to include a display area that is configured to display an indication of the throughput of the network. Therefore, it would have been obvious to one of ordinary

skill in the art at the time of the invention to modify the system and method of Hou to include a modem with a display area that is configured to communicate and display an indication of network performance metrics such as a throughput of the network, so that the user of the communication device can adapt their interactions with the network accordingly.

## *Conclusion*

7.      The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

        Stephens et al., U.S. Publication Number 2005/0197147 A1 discloses an adaptive transmit power control.

        Benco et al., U.S. Publication Number 2005/0148335 A1 discloses network support for per user packet data throughput.

        Arsikere et al., U.S. Publication Number 2005/0068891 A1 discloses method and apparatus for network throughput measurement.

        Stephens et al., U.S. Publication Number 2005/0030891 A1 discloses method and apparatus to select an adaptation technique in a wireless network.

8.      Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony S. Addy whose telephone number is 571-272-7795. The examiner can normally be reached on Mon-Thur 8:00am-6:30pm.
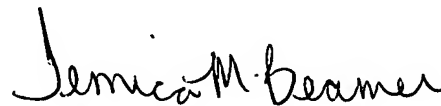
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph H. Feild can be reached on 571-272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony S. Addy
November 23, 2005

TEMICA BEAMER
PRIMARY EXAMINER
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